

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JEFFREY ANCHOR, ET AL.,

Plaintiffs,

v.

**ORDER**  
04-CV-300S

DIAZ INTERMEDIATES CORPORATION, ET AL.,

Defendants.

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1. On April 15, 2004, Plaintiffs commenced this environmental action against Defendants by filing a Complaint in the United States District Court for the Western District of New York.

2. On March 19, 2008, Defendants filed a Motion to Dismiss Certain Plaintiffs due to their failure to prosecute their claims. (Docket No. 88.) On September 15, 2008, this Court referred this case to the Honorable H. Kenneth Schroeder, Jr., United States Magistrate Judge, for all pretrial matters and to hear and report on dispositive motions pursuant to 28 U.S.C. § 636(b)(1). (Docket No. 94.)

3. On October 10, 2008, Judge Schroeder filed a Report and Recommendation recommending that Defendants' motion be granted in part and denied in part. (Docket No. 96.) Judge Schroeder also identified a subset of plaintiffs for which he recommended dismissal unless their counsel declared by November 10, 2008, that the subset of plaintiffs had complied with their discovery obligations. (Docket No. 96, pp.6-7.)

4. On December 5, 2008, this Court issued an Order accepting Judge Schroeder's Report and Recommendation and granting in part and denying in part Defendants' Motion to Dismiss. (Docket No. 109.) In pertinent part, this Court found that

Plaintiff's counsel had not timely declared that the subset of plaintiffs identified by Judge Schroeder was in compliance with its discovery obligations. Consequently, this Court granted the Motion to Dismiss as to that subset of plaintiffs and directed the Clerk of the Court to terminate, *inter alia*, Lauren Blake; Robert Blake; Dorothy A. Lutz, *individually and as parent and natural guardian of Cody Lutz*; Terry Probst; Amanda Roberts; William E. Roberts; and Jennifer L. Welch as plaintiffs in this action.

5. On December 8, 2008, Plaintiffs filed a Motion for Modification of this Court's Order accepting Judge Schroeder's Report and Recommendation. (Docket No. 110.) Therein, Plaintiffs' counsel explains that although he failed to file a declaration, he timely faxed and mailed a letter to Judge Schroeder's chambers, with copies to counsel, indicating that the Plaintiffs named in the preceding paragraph had complied with their discovery obligations. A copy of that correspondence is attached to Plaintiffs' motion papers. Plaintiffs therefore request that this Court modify its prior Order and reinstate the above-identified individuals as parties in this action. Good cause having been shown, this Court will grant Plaintiffs' motion.

IT HEREBY IS ORDERED, that Plaintiffs' Motion to Modify Order (Docket No. 110) is GRANTED.

FURTHER, that so much of this Court's prior Order granting Defendants' Motion to Dismiss Certain Plaintiffs (Docket No. 88) as to Lauren Blake; Robert Blake; Dorothy A. Lutz, *individually and as parent and natural guardian of Cody Lutz*; Terry Probst; Amanda Roberts; William E. Roberts; and Jennifer L. Welch is VACATED.

FURTHER, that Defendants' Motion to Dismiss Certain Plaintiffs (Docket No. 88) is DENIED as to Lauren Blake; Robert Blake; Dorothy A. Lutz, *individually and as parent and natural guardian of Cody Lutz*; Terry Probst; Amanda Roberts; William E. Roberts; and Jennifer L. Welch.

FURTHER, that the Clerk of the Court is directed to REINSTATE Lauren Blake; Robert Blake; Dorothy A. Lutz, *individually and as parent and natural guardian of Cody Lutz*; Terry Probst; Amanda Roberts; William E. Roberts; and Jennifer L. Welch as plaintiffs in this matter.

SO ORDERED.

Dated: December 31, 2008  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge